NO. 10504

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Ninth Circuit

RIDDER BROTHERS, Incorporated, a corporation,
Appellant,

vs.

RAE KINGSLEY BLETHEN, F. D. HAMMONS and WILLIAM K. BLETHEN, as Executors of the Estate of Clarance B. Blethen, Deceased; RAE KINGSLEY BLETHEN, FRANCES A. BLETHEN; WILLIAM K. BLETHEN; JOHN ALDEN BLETHEN; CLARANCE B. BLETHEN; THE BLETHEN CORPORATION, a Corporation; and SEATTLE TIMES COMPANY, a Corporation,
Appellees.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON NORTHERN DIVISION

HONORABLE JOHN C. BOWEN, *Judge*

APPELLANT'S OPENING BRIEF

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INDEX

TABLE OF CASES

TEXTS

TABLE OF STATUTES

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JURISDICTION

The above cause is here on appeal from judgment of dismissal made and entered by the District Court of the United States, Western District of Washington, Northern Division.

There is diversity of citizenship. Appellant is a New Jersey corporation. Appellee, The Blethen Corporation, is a Washington corporation, and ap-

pellee, Seattle Times Company, is a Delaware corporation. (Tr. 3). The remaining appellees are residents of the State of Washington. Whether or not the matter in controversy exceeds, exlusive of interest and costs, the value or sum of $3,000 presents the issue on this appeal. It is the position of appellant that the requisite amount is involved, and, there being diversity of citizenship, that the District Court has jurisdiction as provided in United States Judicial Code (28 U.S.C.A. 41 (1)).

The defendants in the action with the exception of Clarance B. Blethen moved the District Court for a dismissal on the ground that the court "lacks jurisdiction, because the amount actually involved is less than $3,000, exclusive of interest and costs." (Tr. 80). The motion of these moving defendants, appellees here, was granted by the District Court and that Court on the 14th day of June, 1943, made and entered the judgment of the court dismissing the action for want of jurisdiction, the District Court being of the opinion that the statutory amount was not involved. (Tr. 84). Notice of appeal was filed on July 6, 1943, (Tr. 86) and a cost bond in the sum of $250 was posted on the same day (Tr.86).

The Circuit Court of Appeals for the Ninth Circuit has jurisdiction of this appeal under Section 128a of the United States Judicial Code (28 U.S.C.A. 225 (a)).

STATEMENT OF THE CASE

This suit is one in substance to enforce specific performance of a contract between Clarance B. Blethen, the former publisher of the Seattle Times,

and Bernard H. Ridder, Joseph E. Ridder and Victor F. Ridder, as co-partners doing business as Ridder Brothers. The contract, designated by the parties, "Supplemental Agreement," (Exhibit D, Tr. 56) was executed December 30, 1929, and was amended several times during the next few months. (Exhibits E, F and G, Tr. 65, 69 and 74). The facts as to the execution and performance under this contract as amended as well as to the execution and performance under the principal contract (Exhibit A, Tr. 31) (to which the one herein involved is "supplemental") are set forth in detail in the complaint. (Tr. 3 to 79).

At the time of the execution of these contracts (December 30, 1929) Seattle Times, Incorporated, a Nevada corporation, was the owner and publisher of a daily newspaper in the City of Seattle, Washington, named the Seattle Times. The main contract provided in brief for the transfer by the owners of stock in the Nevada company of their stock in that company to a corporation to be organized under the laws of Delaware; for the creation of several classes of stock in the Delaware corporation, including a class of stock to be known as Class B common stock, such Class B common stock to be divided into 1000 shares and to have full voting rights subject only to the right of the holders of the preferred stock to exercise voting powers in the event of default in the payment of divdends on such preferred stock; for distribution of the several classes of stock as in the agreement provided, and for the considerations therein stated, the Ridder Brothers to take 2,690

shares of the preferred stock, 13,000 of the Class A common stock and 440 shares of the Class B common stock, and to pay therefor the sum of $1,541,970 (Tr. 50), and C. B. Blethen to take in consideration of the transfer of his stock in the Nevada corporaton, 352.94 shares of the common stock thereof, to the Delaware corporation and payment to him of $280,980 cash, 7,310 shares of the preferred stock, 7,000 shares of the Class A common stock and 560 shares of the Class B common stock (Tr. 49); and for the execution of a supplemental agreement as provided in paragraph Nineteenth of the main contract reading as follows:

> "The parties hereto of the first and third parts have, simultaneously with the execution and delivery of this agreement, entered into another agreement bearing even date herewith, and hereinafter referred to as the 'supplemental agreement'. The closing of this agreement is contingent upon the performance by the parties of the first and third parts of all of the terms, clauses, covenants and conditions to be performed under such supplemental agreement between them and in the event that such other agreement is not completed and/or closed, this agreement is to be deemed null and void."

The supplemental agreement was executed on the 30th day of December, 1929 (Tr. 56).

The Delaware corporation was organized. All the stock in the Nevada corporation was transferred thereto, along with all the assets of the Nevada corporation, as in the main contract provided. Payments were made as therein provided and the other details carried out, resulting in the taking over of the newspaper Seattle Times by the Delaware cor-

poration, and the publication thereupon and thereafter by the Delaware corporation of that newspaper, with C. B. Blethen and the Ridders in the management thereof as provided in the supplemental agreement (Tr. 9).

Following the carrying out of these contracts, the voting stock of the Delaware corporation, appellee Seattle Times Company, the Class B common stock, was held as follows: C. B. Blethen 550 shares, Ridder Brothers 440 shares and Elmer E. Todd 10 shares (Tr. 10).

Subsequent to the carrying out of these contracts, C. B. Blethen organized The Blethen Corporation, a holding company, and transferred to this corporation, as he had a right to do under the provisions of these contracts, 455 shares of his Class B common stock in the Delaware corporation. Blethen's ownership of stock in The Blethen Corporation was at the time and continued to be up to the time of his death 60% thereof as required under the provisions of paragraph "Eighth" of the supplemental agreement.

Blethen passed away on the 30th day of October, 1941. At the time of his death the Class B common stock of the Delaware corporation was held as follows: C. B. Blethen 39 shares, The Blethen Corporation 455 shares, Rae Kingsley Blethen, wife of Blethen, one share, Elmer Todd 10 shares and Ridder Brothers 495 shares. (Tr. 10, 11).

Paragraph "Eighth" of the supplemental agreement (Tr. 76) provides as follows:

"Eighth: Blethen agrees, immediately after the issuance of Class B common stock to him, to make a last Will and Testament, or some other instrument in writing, which will provide in effect that his Class B common stock be held in trust by his trustees after his death for a period of twenty-one (21) years from December 30, 1929. Such last will and Testament or other trust instrument shall also provide that Blethen's Class B common stock shall not be sold by his trustees until the termination of such trust. Such last Will and Testament or other trust instrument shall constitute, nominate and appoint the widow of said Blethen as one of the trustees, Bernard H. Ridder, another of such trustees, and Elmer E. Todd, the third of such trustees. It shall further provide that, in the event of the death, resignation or disability of his widow at any time, the vacancy caused thereby shall not be filled but the surviving trustees shall act. In the event of the death, resignation or disability of Bernard H. Ridder at any time, one of his brothers shall act as trustee in his place and stead, and in the event of the death, resignation or disability of Elmer E. Todd at any time, one of the partners of the law firm now representing Blethen shall act as trustee in his place and stead. Such last Will and Testament or other trust instrument shall also provide that upon the termination of the trust, Blethen's Class B common stock shall be distributed by the trustees among the surviving sons of said Blethen and the issue of such of them as may be deceased, in equal shares, per stirpes. Such last Will and Testament, or other trust instrument, shall further provide that, in case of any difference or differences of opinion between the said trustees as to any question connected with the management of the corporation, the Class B common stock of which is to constitute the corpus of the trust, any trustee may submit such a question for arbitration, upon notice to the other trus-

tees, to the then general manager of The Associated Press, and in any such case the decision of the said then general manager of The Associated Press shall be final and conclusive and be binding upon all of said trustees. Provided, however, that if said Blethen transfers, to a holding corporation to be formed by him, any of his Class B common stock in Seattle Times Company a Delaware corporation (not less, in any event, than fifty-one (51) per cent of such stock at any time issued and outstanding), as permitted by the Fifth paragraph of the agreement of December 30, 1929, as herein modified, his last Will and Testament shall contain suitable provisions that not less than sixty (60) per cent of the voting stock of such holding corporation shall pass to the trustees above named, to be held in trust for the same period and under the same terms and conditions hereinabove provided."

By these provisions of the supplemental agreement Blethen was obligated to make a last will and testament or execute some other instrument in writing which would provide:

1. "* * * in effect that his Class B common stock be held in trust by his trustees *after his death* for a period of twenty-one (21) years from December 30, 1929";

2. For the appointment of the widow of Blethen, Bernard H. Ridder, one of the Ridder Brothers, and Elmer E. Todd as trustees;

3. For provision in the will or other instrument that "in case of any difference or differences of opinion between the said trustees as to any question connected with the management of the corporation, the Class B common stock of which is to constitute the corpus of the trust, any trustee may submit such a question for arbitration, upon notice to the other trus-

tees, to the then General Manager of the Associated Press, and in any such case the decision of the said then General Manager of the Associated Press shall be final and conclusive and be binding upon all of said trustees"; and

4. For the distribution of the stock at the end of the trust period "among the surviving sons of said Blethen and the issue of such of them as may be deceased, in equal shares, per stirpes."

It is to be noted that paragraph "Eighth" contained provisions authorizing the transfer by Blethen of his Class B common stock in the Delaware corporation or a part thereof to a holding company organized by him, and providing that Blethen should at all times have not less than 60% of the voting stock of such holding corporation, and that such stock should pass to the trustees and be held in trust for the same period and under the same terms and conditions as set forth with respect to the Class B common stock of the Delaware corporation, Seattle Times Company.

On or about June 28, 1930, Blethen delivered to the Ridder Brothers a copy of a will which he stated he proposed to execute as a compliance with the requirements of the supplemental agreement. This will was a compliance therewith, and the Ridder Brothers expressed satisfaction therewith. (Tr. 11-16). Whether or not this will was ever actually executed is not known. Be this as it may, on December 4, 1940, Blethen executed another will, and following his death this will was admitted to probate and his estate is being probated thereunder in the Superior Court of the State of Washington for King

County. The Ridders knew nothing of this will of 1940 until presented for probate. The claim of the appellant in this suit is that the will does not carry out the provisions of paragraph "Eighth" of the supplemental agreement, is a violation thereof and constitutes a breach of such agreement. The will fails to provide that the stock in question "be held in trust by his trustees *after his death*" for the period specified in the supplemental agreement. It provides for the control in voting of this stock for the period required to probate the estate of Blethen by the executors appointed under the terms of the will. These executors are persons other than the trustees specified in the supplemental agreement. The provision of the supplemental agreement that the designated trustees take over "after his death" subject to adjustment of disputes by the Manager of the Associated Press, is deferred by the will until the conclusion of the probate proceedings which have been going on since November, 1941, with the end thereof not in view. This, it is the contention of appellant is not in compliance with the supplemental agreement which provided that his will should make provision for taking over by the designated trustees "after his death". And this will fails to provide for distribution of the stock to all of the surviving sons of Blethen "and the issue of such of them as may be deceased, in equal shares, per stirpes." Clarence B. Blethen II, one of Blethen's surviving sons, is, along with his issue, disinherited under the terms of this will. This, appellant contends, con-

stitutes a violation of the supplemental agreement, providing that at the termination of the trust period the stock to be placed in trust should be distributed equally to the surviving sons and the issue of such of them as may be deceased, in equal shares, per stirpes.

This suit was brought by Ridder Brothers, Incorporated, to whom the Ridder Brothers as partners assigned their interest in the supplemental agreement.

We have thus briefly outlined the facts as alleged in appellant's complaint so that the court may have before it the situation in its entirety involved in this litigation. The merits of the case, of course, were not before the lower court on the motion to dismiss, nor are the merits before this court on appeal. The issue before the lower court and the issue here is whether or not the matters in controversy involve the amount requisite to give the District Court jurisdiction.

In this action appellant first prays that the stock now held by the executors be conveyed to the trustees forthwith or that in the alternative the executors be instructed to vote the same as directed by the trustees designated in the supplemental agreement. (Tr. 28, 29). Appellant also prays for a decree adjudging that the stock be held in trust for the benefit of Clarance B. Blethen II as well as the other three of Blethen's surviving sons, as required by the supplemental agreement. (Tr. 29). As heretofore pointed out, the stock involved is 39 shares of the Class B common stock of the Seattle Times Com-

pany and the controlling stock of The Blethen Corporation which company, in turn, owns 455 shares of the said Class B common stock.

Relief of this nature is proper and is well supported by the authorities.

McCullough v. McCullough, 153 Wash. 625; 280 Pac. 70;
Fields v. Fields, 137 Wash. 592, 243 Pac. 369;
Worden v. Worden, 96 Wash. 592, 165 Pac. 501;
Wayman v. Miller, 195 Wash. 457, 81 P. (2d) 501;
Avenetti v. Brown, 158 Wash. 517, 291 Pac. 469;
Clark v. Crist, 178 Wash. 187, 34 P. (2d) 360;
Jones v. Seattle Title & Trust Co., 157 Wash. 507, 289 Pac. 36;
Lager v. Berggren, 187 Wash. 462, 60 P. (2d) 99;
Luther v. National Bank of Commerce, 2 Wash. (2d) 470, 98 P. (2d) 667;
Alexander's Commentaries on Wills, Vol. 1, Sec. 107;
Alexander's Commentaries on Wills, Vol. 1, Page 168;
25 R.C.L. 306 (Sec. 120) and 311 (Sec. 125);
58 C. J. 1060.

The District Court dismissed the action for lack of jurisdiction, being of the opinion that the jurisdictional amount was not involved. In reference to the first matter in controversy (control of the stock in question) the court, in dismissing the action, found:

> "That there is no satisfactory proof of the value of the right to vote the corporate stock involved in the first matter in controversy and referred to in paragraphs 1 and 2 of the prayer of plaintiff's complaint." (Tr. 85.)

On the second matter in controversy (the enforce-

ment of a trust in favor of all four surviving sons including Clarance B. Blethen II, disinherited under the will) the court ruled:

> "That the value to plaintiff of the second matter in controversy as referred to in paragraph 3 of the prayer of plaintiff's complaint, is nominal and less than $3000.00 exclusive of interest and costs.
>
> That the loss or detriment to defendants if plaintiff should prevail on the second matter in controversy, as referred to in paragraph 3 of the prayer of plaintiff's complaint, exceeds in value the sum of $3000.00 exclusive of interest and costs." (Tr. 85)

With respect to this last finding, the same is supported by the allegations of the complaint (Par. XI, Tr. 10) and the stipulation of the parties. (Tr. 82)

This appeal is taken from the judgment of dismissal.

SPECIFICATION OF ERRORS

On this appeal appellant relies on the following errors of the District Court:

> "1. The Court erred in rendering judgment dismissing the action for want of jurisdiction.
>
> 2. The Court erred in deciding that the matters in controversy in the action do not exceed, exclusive of interest and costs, the sum or value of $3,000.00.
>
> 3. The Court, having found that the loss or detriment to defendants if plaintiff should prevail on the second matter in controversy, as referred to in paragraph 3 of the prayer of plaintiff's complaint, exceeds in value the sum of $3,000, exclusive of interest and costs, erred in dismissing the action for want of the jurisdictional amount, for the test in determining

whether or not the jurisdictional amount is involved in a given controversy is whether or not the possible loss or detriment to the defendant, as well as the possible gain to the plaintiff. exceeds $3,000.00 exclusive of interest and costs. In other words, the value of the matter in controversy, means the pecuniary result to either party which the judgment entered in the cause would directly produce, either at once or in the future."

SUMMARY

The question on this appeal is the test to be applied in determining whether or not the jurisdictional amount is present. It is appellant's contention that the value of the matter in controversy means the pecuniary result to either party which the judgment in the cause would directly produce either at once or in the future. Appellants contend that it is the value to plaintiff only that controls; and this was the view of the lower court.

As to the matters in controversy, the one as to the right of the designated trustees to control the stock in question having been referred to below and referred to herein as the first matter in controversy, and the one as to the right to establish a trust in favor of the disinherited son having been referred to below and referred to herein as the second matter in controversy, if the court has jurisdiction as to either thereof, it has jurisdiction as to the other, as jurisdiction once obtained will attach for all purposes.

ARGUMENT

Second Matter In Controversy

The District Court found that if appellant prevailed on the second matter in controversy, the value to it of the judgment would be nominal but *that the loss to appellees would exceed* the jurisdictional amount. Relying on cases that speak of the test as being "the value of the object to be gained by complainant" and the "value to plaintiff of the right which he seeks to protect" and others using similar expressions, the Court concluded that the matter had to be viewed solely from the plaintiff's viewpoint and accordingly found that there was no jurisdiction.

There are, of course, a great many decisions employing such expressions. In fact in many instances the problem of jurisdiction can be determined most easily by considering the monetary value of the relief that plaintiff is seeking. How much in damages is he suing for? What is the value of the right which he is seeking to protect or enforce? Frequently, too, defendant's prospective loss is the same as plaintiff's prospective gain. For instance, in *Electro-Therapy Products v. Strong,* (C.C.A. 9), 84 F. (2d) 766, plaintiff sued to compel specific performance of a contract to assign certain inventions. This Court held that the matter in controversy was plaintiff's right to have the inventions assigned to it and that it was the value of this right that governed. This, the court said, depended on the value of the inventions. Obviously plaintiff's gain and defendant's loss were one and the same so that the case

could have been decided from the viewpoint of either litigant. The pecuniary result to either party exceeded the jurisdictional amount. We do not think the court intended in this case to announce any rule of general or universal application as to whether or not the requisite amount is involved to give the Federal Court jurisdiction.

In some instances the value to plaintiff involves the requisite sum whereas the loss to defendant does not and, in such instances, the courts have accepted jurisdiction. For instance, in *Glenwood Light and Water Co. v. Mutual Light, Heat and Power Co.,* 239 U. S. 121, 60 L. Ed. 174, 36 S. Ct. 30, the plaintiff sought to restrain the defendant from so erecting poles and wires as to injure and interfere with plaintiff's poles, wires and business. The value of plaintiff's right to be free from this interference was worth more than $3,000 while it would have cost the defendant less than that sum to remove the obstructions. The requisite amount being present so far as one litigant was concerned, the court properly accepted jurisdiction saying that the value of plaintiff's right not to have its business interfered with was determinative. The same result would unquestionably have been reached had the value to plaintiff been less than $3,000 but the cost to defendant of removing the poles and wires had been in excess of that sum. *Mississippi and Missouri Railroad Company v. Ward,* 2 Black 485, 67 U. S. 485, 17 L. Ed. 311.

Accordingly, it is necessary to analyze the cases carefully because the statement in a decision that it

is the value to plaintiff that controls does not by any manner of means indicate that that particular court is of the opinion that the possible loss to defendant can not also be considered. The only authorities entitled to weight in this matter are those in which the court places emphasis on the defendant's loss, although plaintiff's value is likewise sufficient, together with those cases in which defendant's loss is sufficient but plaintiff's value is below the requisite amount.

The true rule seems to be that the value of the matter in controversy means the pecuniary result to either party which the judgment entered in the cause will directly produce either at once or in the future. This is a reasonable and just test. The monetary limitation on jurisdiction was designed to protect Federal Courts from inconsequential litigation. *Davis v. Mills,* (C.C. Conn.), 99 Fed. 39, *Tlusty v. Gillespie-Rogers-Pyatt Co.,* (D.C.E.D.N.Y.), 35 F. Supp. 910. The amount was first fixed at $500 by the Judiciary Act of 1789 (Chap. 20, 1 St. at L. 73), was later raised to $2000 (Chap. 373, 24 St. at L. 522) and now stands at $3000 (Chap. 231, 36 St. at L. 1087, 28 U.S.C.A. 41 (1)). When either the plaintiff stands to gain the latter amount or the defendant stands to lose it, the purpose of the rule is satisfied. Such a rule is easy of application and it assures the courts that their work will be limited to substantial litigation.

At an early date, the rule or test for which appellant contends received the approval of the Supreme Court of the United States. In *Mississippi*

and Missouri Railroad Company vs. Ward, 2 Black 485, 67 U. S. 485, 17 L. Ed. 311, the plaintiff, part-owner of three steamboats navigating the Mississippi River, sued to abate an alleged nuisance consisting of defendants erection of a bridge across the river. He sought no damages but only the removal of the structure. There was no showing of the extent of the damage to plaintiff. It was obvious, however, that it would cost much more than the jurisdictional amount to remove the bridge. The Supreme Court held that this was sufficient to confer jurisdiction saying:

> "But the want of a sufficient amount of damage having been sustained to give the Federal Court jurisdiction, will not defeat the remedy, as the removal of the obstruction is the matter of controversy, and the value of the object must govern."

This decision and the principal therein announced has been approved by many subsequent Federal cases including the following opinions of the United States Supreme Court:

Hunt v. New York Cotton Exchange, 205 U. S. 322, 51 L. Ed. 821, 27 S. Ct. 529;
Glenwood Light and Water Company v. Mutual Light, Heat and Power Company, 239 U. S. 121, 60 L. Ed. 174, 36 S. Ct. 30;
Packard v. Banton, 264 U. S. 140, 68 L. Ed. 596, 44 S. Ct. 257;
Healy v. Ratta, 292 U. S. 263, 78 L. Ed. 1248, 54 S. Ct. 700.

It is true, of course, that in some of these cases the value of the litigation was most easily measured from the plaintiff's viewpoint. In the ordinary situation the value to the plaintiff is equal to or in ex-

cess of the loss to the defendant and accordingly most cases can be disposed of by applying the test from the plaintiff's viewpoint. However, in those instances in which the value to the plaintiff is less than the jurisdictional amount but the defendant's loss exceeds that figure, the courts have not hesitated to allow jurisdiction.

For instance, in *Elliott vs. Empire Natural Gas Co.,* (C.C.A. 8), 4 F (2d) 493, the plaintiff sought an injunction to prevent the defendant from cutting off plaintiff's gas supply unless he paid a $16 bill. Suit was originally brought in the State Court and the defendant sought to remove it because of diversity of citizenship and the fact that more than $3,000 was involved. Their theory was that this litigation would establish their right to collect similar sums from a great many other people not parties to the action but situated similarly to plaintiff. It was obvious that from the plaintiff's standpoint the jurisdictional amount was not involved but the Circuit Court of Appeals for the Eighth Circuit, after carefully reviewing at length all of the leading decisions on the subject concluded that the pecuniary result to either party should be considered. They summarized their conclusion in the following language:

> "We think 'the value of the matter in controversy,' as the term is used in section 24 of the Judicial Code, means the pecuniary result to either party which the judgment entered in the case would directly produce, either at once or in the future."

Although viewing the matter from the defend-

ant's viewpoint the court denied jurisdiction on the ground that the effect of the judgment on the defendant's relations with third parties was too indirect. On this point they said:

> "It is what the appellees will directly lose in this suit that determines the jurisdictional value of the matter involved. It is not what they may lose as an indirect result of this suit."

The Circuit Court of Appeals for the Tenth Circuit recently had occasion to apply the same principal in *Ronzio vs. Denver & R. G. W. R. Co.,* (C.C.A. 10), 116 F. (2d) 604. In that action the plaintiff sued the Railroad Company in the State Court to quiet the title to certain water rights and to determine their respective priorities. The Railroad Company alleged diversity of citizenship and that the amount involved exceeded $3,000. It was stipulated that the value to plaintiff of his claim to water rights did not exceed $2,000 but that the value to the Railroad Company of the right to take and use the water claimed by plaintiff was in excess of $3,000 and that, if plaintiff prevailed, the Railroad's detriment or loss would exceed the jurisdictional amount. Thus the case presented the exact problem that is now before the Court in the case at bar. After referring to several of the leading cases including the decision of the United States Supreme Court in *Smith vs. Adams,* 130 U. S. 167, 9 S. Ct. 566, 32 L. Ed. 895, the court held that the requisite jurisdictional amount was involved, saying:

> "In determining the matter in controversy, we may look to the object sought to be accomplished by the plaintiffs' complaint; the test for

> determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce."

The same problem was presented to the District Court for the Southern District of Indiana in *Armstrong v. Townsend,* 8 F. Supp. 953. In that action the plaintiff, as a tax payer, sought to enjoin the auditor of the State of Indiana from paying the Lieutenant-Governor a salary of $6,000 a year. If he prevailed, the saving to the plaintiff in taxes would have been nominal but the loss to the Lieutenant-Governor, who was a party defendant, would have exceeded the jurisdictional amount. The court held that the matter should be viewed from the defendant's viewpoint and that it accordingly had jusisdiction. They concluded:

> "The value of the matter in controversy is the pecuniary result to either party which a decree would produce, either at present or in the future."

A similar result was reached in *Griffiths v. Enochs,* (D.C.W.D. La.), 43 F. Supp. 352. The court there said:

> "The federal courts have interpreted the significance of like or similar facts in determining the 'value of the matter in controversy' under Section 24 of the Judicial Code, 28 U.S.C.A. § 41. The case of *Elliott v. Empire Natural Gas Co.,* 8 Cir., 4 F. 2d 493, is quite rehearsive of the jurisprudence. We quote the most pertinent paragraph: 'Many cases decided in the courts affect others indirectly who are not parties thereto. The alleged rights of appellees as against others who are not parties to the suit are not in dispute in this case, within the meaning of the statute. We think "the value of the

> matter in controversy," as the term is used in Section 24 of the Judicial Code, means the pecuniary result to either party which the judgment entered in the case would directly produce, either at once or in the future."

An earlier case that is very frequently cited is *Cowell v. City Water Supply Co.,* (C.C.A. 8), 121 Fed. 53. In this case the plaintiff sued to recover on a $1,000.00 bond or in the alternative to obtain judgment for $1,650.00 against members of the Bondholders Committee. It was admitted that the amount which plaintiff sought to recover was less than the jurisdictional requirement but it was argued that the court had jurisdiction because plaintiff prayed that a $475,000.00 mortgage given by the defendant be cancelled and annulled. The Circuit Court held that from the plaintiff's standpoint, he could not recover the jurisdictional amount and that so far as the defendant was concerned, it could not lose more than the plaintiff's interest in the mortgaged property which admittedly amounted to only $1,650.00. They accordingly denied jurisdiction. In viewing the case from the standpoint of both litigants, the court, after reviewing earlier authorities, said:

> "Perhaps these cases sufficiently illustrate and establish the rule that it is the amount or value of that which the complainant claims to recover, or the sum or value of that which the defendant will lose if the complainant succeeds in his suit, that constitutes the jurisdictional sum or value of the matter in dispute, which tests the jurisdiction of the Circuit Courts of the United States."

In *Miller v. First Service Corporation,* (C.C.A. 8),

84 F. (2d) 680, plaintiff sued to set aside a conveyance of real property by a judgment debtor and to subject the land to the lien of a judgment for a sum in excess of $11,000. The value of the land was but $960. The court ruled that the plaintiff only stood to gain $960 and that the defendant could not lose more than that amount. In denying jurisdiction they said:

> "The rule has long been settled that: 'It is the amount or value of that which the complainant claims to recover, or the sum or value of that which the defendant will lose if the complainant succeeds in his suit, that constitutes the jurisdictional sum or value of the matter in dispute, which tests the jurisdiction of the Circuit Courts of the United States."

In this same connection the decision of the Supreme Court of the United States in *Smith v. Adams,* 130 U. S. 167, 32 L. Ed. 895, 9 S. Ct. 566, should not be overlooked. In that case plaintiff instituted an action against certain county commissioners challenging the validity of an election changing the location of the county seat. A demurrer to the complaint was first sustained but this ruling was reversed on appeal. From this latter decision the county commissioners appealed to the Supreme Court of the United States. The latter only had jurisdiction in the event that more than $5,000 was involved. The Supreme Court denied jurisdiction on the ground that it was impossible to state any rule by which the benefit the county might gain or the damage it might suffer from the result of the contested election could be estimated. It is significant that they considered the matter from

the standpoint of the loss or benefit to the county, the officials of which were the original defendants. In justifying this position the Supreme Court said:

> "By matter in dispute is meant the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken. It is conceded that the pecuniary value of the matter in dispute may be determined, not only by the money judgment prayed, where such is the case, but in some cases by the increased or diminished value of the property directly affected by the relief prayed, *or by the pecuniary result to one of parties immediately from the judgment.*
>
> (Italics ours.)

Another pertinent decision is that of *Harrison v. Grandison Co.* (D.C.E.D. La.), 34 F. Supp. 356, which was an action for slander of title. Plaintiff prayed for damages in the sum of $3,000 and sought to quiet the title to mineral rights worth $5,000. The court pointed out that, if plaintiff prevailed, his recovery would exceed in value the jurisdictional amount and that the defendant's loss would likewise exceed such sum. The court made quite a point of the fact that the test could be applied either from the standpoint of the plaintiff's gain or the defendant's loss, saying:

> "When a litigant so seeks to obtain certain remedial relief, including compensatory damages, the pecuniary value of the matter in controversy (for the purpose of deciding the question of a Federal Court's jurisdiction vel non), may be arrived at by considering the increased or diminished value of the property directly affected by the remedial relief prayed for, or the pecuniary result to *one* of the parties im-

> mediately from the judgment. *Smith v. Adams,* 1889, 130 U. S. 167, 9 S. Ct. 566, 32 L. Ed. 895. * * *
>
> The amount or value of *that which the plaintiff seeks to recover,* or the amount or value *which the defendant will lose* if the plaintiff obtains the recovery that he seeks, is what should and does determine the question of jurisdiction; and the sum or value of *that* which is *here* in dispute, is certainly much over the jurisdictional sum prescribed by law. *Cowell et al. v. City Water Supply Co.* et al., 8 Cir., 1903, 121 F. 53."
>
> (Italics by the Court.)

In *New Jersey Federation of Young Men's and Young Women's Hebrew Associations v. Hoffman,* (D.C., M.D. Penn.), 25 F. Supp. 687, plaintiff sued to remove a cloud on the title to certain property. The court found that "the pecuniary result to both parties" as a consequence of the judgment sought by plaintiff would involve more than $3,000 and accordingly sustained jurisdiction. In reaching this conclusion they said:

> "In determining the amount in controversy for the purpose of deciding whether there is federal jurisdiction, the pecuniary result to either party which the decree would produce is the proper test. Armstrong v. Townsend, D.C., 8 F. Supp. 953; Elliott v. Empire Natural Gas Co., 8 Cir., 4 F. 2d 493. The value of the object to be attained by the suit is the basic consideration. Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U. S. 121, 36 S. Ct. 30, 60 L. Ed. 174."

This rule was recognized by the District Court for the Eastern District of Kentucky in *Morrow v. Mutual Casualty Co. of Chicago,* 20 F. Supp. 193.

They there quote with approval the following statement from Hughes on Federal Practice:

> "The value of the matter in controversy is the value of that which the complainant seeks to recover, or the value of that which the defendant will lose if the complainant obtains the recovery he seeks."

The most recent pronouncement of the Supreme Court of the United States on this question appears in *Thomson v. Gaskill,* 315 U. S. 442, 86 L. Ed. 951, 62 S. Ct. 673. In that case a number of railroad employees sued to determine whether or not they had been wrongfully deprived of their seniority rights. In speaking of the test to be applied in determining if the jurisdictional amount was present, the court said:

> "In a diversity litigation the value of the 'matter in controversy' is measured not by the monetary result of determining the principle involved, but by its pecuniary consequence to those involved in the litigation. Wheless v. St. Louis, 180 US 379, 382, 45 L ed 583, 585, 21 S Ct 402; Oliver v. Alexander, 6 Pet (US) 143, 147, 8 L ed 349, 350.

It was conceded that the claim of no single individual exceeded $3,000 and the court pointed out that the record was too incomplete to enable them to determine whether or not the plaintiffs had a common undivided interest or were enforcing a single title or right so that their respective values could be totalled. It is, of course, well established that only under certain circumstances can a number of plaintiffs join together in a single action in a Federal Court. This rule must ordinarily be com-

plied with even though the total possible loss to the defendant will exceed the jurisdictional amount.

Appellant, of course, does not contend that the only requisite of jurisdiction is the loss or detriment to the defendant if plaintiff prevails. There are other prerequisites such as diversity of citizenship and in the case of numerous plaintiffs they must have a common and undivided interest or they must be asserting a single title or right.

A case exactly in point is the decision in *Crockett v. Overfield,* (D.C.E.D. Ida.), 22 F. Supp. 915. In this case an individual, presumably a tax payer, brought suit in a state court to have declared void a transfer of real property by a county to the defendant. The defendant removed the case to District Court and the plaintiff made a motion to remand. The value of the land exceeded the jurisdictional amount. In denying the motion to remand the court pointed out that the plaintiff was seeking to recover the property for the benefit of the county. In holding that the court had jurisdiction because the defendant would lose more than the jurisdictional amount if plaintiff prevailed, the court said:

> "The title and right to the tracts of land is involved for the property is the real subject matter of the suit; *that is, the property the plaintiff is endeavoring to recover for the county and which the defendant stands to lose if the plaintiff is successful,* therefore the value of the property is the real amount in dispute."
> (Italics ours.)

In *Hoover & Allen Co. v. Columbia Straw Paper Co.,* (C.C.S.D. Ohio W.D.), 68 Fed. 945, plaintiff sued in the state court for less than the federal

jurisdictional amount but attached property worth in excess of that sum. One of the defendants asserted a claim against all of the attached property and removed the case to the District Court. The plaintiff made a motion to remand on the ground that the jurisdictional amount was not involved and this motion was denied. The court ruled that the value of the land governed rather than the amount which plaintiff sought to recover. In other words, the fact that the defendant's loss might exceed the jurisdictional amount was sufficient though the plaintiff was suing for a lesser sum.

Another recent decision recognizing the rule for which appellant contends is *Enzor v. Jefferson Standard Life Insurance Co.,* (D.C.E.D. S. C.), 14 F. Supp. 677. In that case the court refers with approval to the statement of the rule by Hughes in his work on Federal Practice, Volume 1, Section 422, that the value of the matter in controversy is the value of that which the plaintiff seeks to recover or of that which the defendant may lose and that it is the pecuniary result to either party that governs.

This rule was early recognized in the District Court for the Western District of Washington in our local District Court. Judge Hanford, in *Oregon Railway & Navigation Co., v. Shell,* (C.C.D. Wash. S.D.), 125 Fed. 979, was concerned with a suit by a railroad to correct an alleged ambiguity in a deed describing a right of way and to restrain the removal of gates at a crossing over the right of way. The railroad attempted to sustain jusisdiction on the theory that it had a right to fence its right of

way and maintain gates and that, if it did not do so, serious accidents involving substantial damages might occur. The defendant land owners contended that the true test was the reasonable value of the right of way and the amount of damages that the defendant might be entitled to by reason of the construction and operation of the railroad. These latter items amounted to less than the jurisdictional amount. The court upheld the defendant and denied jurisdiction saying:

> "It is my opinion that in the mere statement of the two opposing propositions the superior strength of the defendants' position, in reason, is obvious; for if the court should grant a decree in favor of the complainant for all the relief demanded *it will gain and the defendants will lose* only the pecuniary advantage of having possession and complete control of the right of way, and the value thereof cannot be greater than the amount which the complainant would be obliged to pay to the defendants in order to acquire possession and complete control, if it did not claim to be already entitled thereto."
>
> (Italics ours.)

The rule was likewise followed in *National Lock Co. v. Chicago Regional Labor Board,* (D.C.N.D. Ill. W.D.), 8 F. Supp. 820. The plaintiff instituted suit in State Court and obtained a temporary injunction restraining defendant from acting with reference to a walkout of plaintiff's employees. Defendant filed a transcript of the record in District Court and moved to dissolve the temporary injunction. The plaintiff filed a cross-motion to remand, thereby challenging the jurisdiction of the District Court on the ground that the requisite amount was

not involved. In denying jurisdiction the court quoted with favor the following from Section 13 of Foster on Federal Practice:

> "In a suit for an injunction the value of a matter in dispute is that of the object of the bill, namely, the value to the plaintiff, of the right for which he prays protection or the value to the defendant, of the act of which the plaintiff prays prevention."

They likewise quoted with approval the following from Section 129 (G) of Rose's Code of Federal Procedure:

> "In a suit for an injunction the matter in dispute is not determined by the amount which the complainant might recover at law for the acts complained of, but by the value of the right to be protected or the extent of the injury to be prevented by the injunction."

In holding that the jurisdictional amount was not present, they said:

> "The court can not estimate the loss in money, if any, which the plaintiff will sustain should it prevail in its suit, nor can the court say how any calculable money value can accrue to the defendants by conducting a hearing or making its results public."

In *Nueces Valley Town-Site Co. v. McAdoo,* (D.C. W.D. Tex.), 257 Fed. 143, plaintiff sued in State Court to enjoin a proposed change of location of certain employees of the Director General of Railroads. The case was removed to the District Court on the ground of diversity of citizenship, and a motion to remand was made. However, the defendant showed that the saving to the Railroad Administration by moving the employees would amount to at

least $400 per month for 21 months. The court, viewing the matter from the standpoint of the defendant's loss, found the jurisdictional amount to be present and denied the motion.

In suits involving nuisances the question of whether or not the requisite amount is involved is frequently considered from the viewpoint of the defendant. See:

Whitman v. Hubbell, 30 Fed. 81;

American Smelting and Refining Co. v. Godfrey, (C.C.A. 8) 158 Fed. 225; writ of Certiorari denied in 207 U. S. 597, 52 L. Ed. 357, 28 S. Ct. 262;

Amelia Mill Co. v. Tenn. Coal, Iron and R. Co., 123 Fed. 811.

The rule is frequently applied, too, in suits brought by stockholders or creditors seeking the appointment of a receiver. The test is particularly applicable when the proposed receivership is intended to conserve and distribute the property of the corporation. For examples of the application of the rule in stockholders' suits, see:

Towle v. American Bldg. Loan & Investment Society, 60 Fed. 131;

Taylor v. Decatur Mineral & Land Co., 112 Fed. 449;

Cole v. Philadelphia & E. R. Co., 140 Fed. 944;

Klein v. Wilson & Co., 7 F (2d) 772, Affirmed (C.C.A. 3), 7 F. (2d) 777;

King v. Kansas City Police Relief Association, 60 F. (2d) 547;

For the application of this rule in creditors' suits, see:

Putman v. Kennedy Dry-Goods & Carpet Co., 79 Fed. 454;

Atwater v. Community Fuel Corp., 291 Fed. 686;
Jones v. Mutual Fidelity Co., 123 Fed. 506;
United States Radiator Corp. v. Doody, 5 F. Supp. 471;
McAtamney v. Commonwealth Hotel Construction Corp., 296 Fed. 500.

The test is likewise applied from the defendant's viewpoint in many of the cases brought by creditors of insolvent banks to enforce the statutory liability of stockholders. Representative decisions are:

Conway v. Owensboro Savings Bank & Trust Co., 185 Fed. 950;
Alsop v. Conway, (C.C.A. 6) 188 Fed. 568; writ of Certiorari denied in 223 U. S. 720, 56 L. Ed. 629, 32 S. Ct. 523;
Robertson v. Conway, (C.C.A. 6) 188 Fed. 579;
Brusselback v. Cago Corp., (C.C.A. 2) 85 F. (2d) 20; writ of Certiorari denied in 299 U. S. 586, 81 L. Ed. 432, 57 S. Ct. 111;
Brusselback v. Chicago Joint Stock Land Bank, (C.C.A. 7) 85 F. (2d) 617;
Brusselback v. Armovitz, (C.C.A. 6) 87 F. (2d) 761;
Reconstruction Finance Corp. v. Central Republic Trust Co., 11 F. Supp. 976;

The necessity of recognizing the rule contended for by appellant is obvious when the matter of counterclaim is considered. For instance, in *Celite Corporation v. Dicalite Co.*, (C.C.A. 9) 96 F. (2d) 242, this court was concerned with a suit for infringement of letters patent. The defendant filed a counterclaim seeking damages for unfair competition. Jurisdiction of the counterclaim was supported upon diversity of citizenship. The court found that more than $3,00 was involved by the counterclaim and accordingly assumed jurisdiction.

This court had occasion to apply the test from the defendant's viewpoint in *Robert Hind, Limited v. Silva,* (C.C.A. 9), 75 Fed. (2d) 74. The issue was whether or not the action involved more than $5,000, the amount necessary to confer jurisdiction on this court in civil cases on appeal from the Supreme Court of the Territory of Hawaii. The plaintiff had been injured in an automobile accident and had accepted a nominal sum in settlement and had given the operator of the vehicle a full release. Subsequently he regretted this and sued to set the release aside and to enjoin the operator of the vehicle from using the release as a defense in a second suit brought by plaintiff to recover damages in the sum of $25,000. Plaintiff was successful in the trial court and the latter's decision was affirmed by the Supreme Court of the Territory of Hawaii. The defendant (operator of the vehicle) appealed to this court. The appellee moved to dismiss the appeal on the ground that the jurisdictional amount was not present, contending that the matter in controversy was $84.50, the amount paid him for the release which he was seeking to set aside. The appellant contended that the matter in controversy was the value to it of the right to use the release as a defense in the $25,000 damage action and that the value of this right exceeded $5,000. This court reviewed the authorities including the decisions of the United States Supreme Court in *Hunt v. New York Cotton Exchange,* Supra, 205 U. S. 322, 51 L. Ed. 821, 27 S. Ct. 529 and *Mississippi and Missouri Railroad Co. v. Ward,* 2 Black 485, 67 U. S. 485, 17 L. Ed. 311 and

then quoted with approval the following statement of the rule from Foster on Federal Practice, (6 ed.), Vol. 1, Sec. 13:

> "In a suit for an injunction, the value of the matter in dispute is that of the object of the bill, namely, the value to the plaintiff of the right for which he prays protection, *or the value, to the defendant,* of the acts of which the plaintiff prays prevention."
>
> (Italics ours.)

In applying the test *from the standpoint of the defendant* and holding that it had jurisdiction of the appeal, this court said:

> "Clearly, the right of appellant to use the release as a complete defense to an action for $25,000 damages exceeds $5,000."

The rule contended for by appellant is supported by the text writers. In the 1942 Four-Year Cumulative Supplement to Moore's Federal Practice under the New Federal Rules, Volume 1, at page 553 we find the following statement:

> "Nevertheless, in determining the amount in controversy, a court may look to the object sought to be accomplished by the action and the pecuniary result to either party which the judgment would directly produce. In accordance with this rule, jurisdiction of a removed cause has been sustained where the fact is, as shown by stipulation of the parties, that the granting of the relief sought by plaintiff would result in a loss of more than $3,000.00 to defendant, although the benefit to plaintiff would not be in excess of $2,000.00."

In Hughes on Federal Practice, Volume 1, Section 422, page 317, the rule is stated as follows:

> "The value of the matter in controversy is the value of that which the complainant seeks

> to recover or the value of that which the defendant will lose if the complainant obtains the recovery he seeks. It means the pecuniary result to either party which the judgment entered in the case would directly produce, either at once or in the future. It is the actual matter in dispute, the value of the rights involved that is controlling."

Again in Moore's Federal Practice under the New Federal Rules, Volume 1, page 525, we find the statement:

> "In an action or proceeding to recover the possession of personal property, the value of the property sought by the plaintiff or claimant generally determines the matter in dispute."

The rule is stated as follows in 27 R.C.L. 116, Sec. 119:

> "In those cases where the amount is jurisdictional, the pecuniary value of the matter in dispute may be determined not only by the money judgment prayed for, where such is the case, but in some cases by the increased or diminished value of the property directly affected by the relief prayed for *or by the pecuniary result to one of the parties* immediately from the judgment."
>
> (Italics ours.)

In 36 C.J.S. 519, the following statement is made:

> "The authorities have frequently asserted the rule that the amount or value involved in the controversy is measured by the pecuniary consequence to either party which the judgment will produce, according to the judicial decisions on the subject, either at once or in the future."

The rule thus established and recognized is simple and fair. It assures the courts of the protection intended for them and at the same time allows liti-

gants to determine substantial matters in a Federal forum. As long as the direct pecuniary consequence to either party exceeds the requisite amount, jurisdiction attaches.

First Matter in Controversy

Inasmuch as the District Court clearly has jurisdiction of the second matter in controversy—the creation of a trust in favor of Clarence B. Blethen II involving a large block of the stock—it likewise has jurisdiction of the first matter in controversy—the right of the trustees to control the stock in question during the period of the administration of the Blethen estate. The rule is well settled that where jurisdiction is acquired by reason of diverse citizenship, all of the issues in the case may, and in fact must, be determined.

> *Sun Oil v. Burford,* (C.C.A. 5) 130 F. (2d) 10;
> *Iowa City v. Iowa City Power & Light Co.,* (C.C.A. 8) 90 F. (2d) 679;
> *Hartford Accident Indemnity Co. v. Southern Pacific Co.,* 273 U. S. 207, 71 L. Ed. 612, 47 S. Ct. 357.

The Supreme Court of the United States said in *Owensboro Water Works Co. v. Owensboro,* 200 U. S. 38, 50 L. Ed. 361, 26 S. Ct. 249:

> "When a Federal court acquires jurisdiction of a controversy by reason of diverse citizenship of the parties, then it may dispose of all of the issues in the case, determining the rights of parties under the same rules or principals that control when the case is in the State Court."

But even standing alone this so-called "first matter in controversy" compels an exercise of the juris-

diction of the District Court; it, too, involves more than the jurisdictional amount.

By virtue of an assignment plaintiff stands in the shoes of the Ridder Brothers with respect to the contract and supplemental contract of December 30, 1929. Under these contracts, as appears from the terms thereof (they are set forth in full on pages 31 to 79 of the Transcript) and from the allegation of the complaint that Ridder Brothers complied with all the provisions thereof, in other words, did all that was required of them thereunder, the Ridder brothers invested $1,541,970 in the Seattle Times newspaper enterprise. (Tr. 36) The Class B stock of Seattle Times Company, the voting stock, consists of 1,000 shares (Tr. 10). Under these agreements Mr. Blethen took 550 shares of this stock, and Ridder Brothers 440 shares. Ten shares were issued to Mr. Todd, Mr. Blethen's lawyer. Later Mr. Blethen transferred to Ridder Brothers, Incorporated, Ridder Brothers' assignee, 55 shares of this stock. During his lifetime Mr. Blethen transferred 455 shares of this stock to the Blethen Corporation, one share to his wife, Rae Kingsley Blethen, and retained in his own name 39 shares. There was also transferred to Ridder Brothers, Incorporated, in consideration for the investment aforesaid, 4,030 shares of the Preferred Stock and 14,000 shares of the Class A Common Stock of Seattle Times Company. (Tr. 10, 11) So the investment of $1,541,970 by Ridder Brothers or their assignee in the Seattle Times newspaper enterprise gave to Ridder Brothers or their assignee a very substantial inter-

est in the enterprise. The Ridder brothers or their assignee acquired and had at the time of Mr. Blethen's death the Preferred and the Class A Stock referred to and 495 shares of the 1,000 shares of the voting or Class B common stock. (Tr. 11). Now, while Mr. Blethen lived, he and the Ridders were to operate the business together. This was provided by the provisions of the supplemental agreement; Mr. Blethen was to be president and publisher and that the Ridders were to participate in the management through a management contract. Upon Mr. Blethen's death, how were thing to be handled? This question Mr. Blethen and the Ridders answered by the supplemental agreement. (Tr. 56 to 79.) They contracted by this agreement that upon Mr. Blethen's death his Class B stock was to be transferred to three trustees, one of whom was to be one of the Ridder Brothers, and that in case of any difference or differences between the trustees, the same were to be settled by the then manager of the Associated Press. (Tr. 77). So, by virtue of the agreements in question, it was contracted that the Ridders upon the death of Mr. Blethen were to have outright control of 495 of the 1,000 shares of the voting stock, and a say as one of the three trustees as to the control of an additional 495 shares of this stock. In other words, the Ridders were in substance and effect given a voice with respect to 990 shares of the 1,000 shares of the voting and controlling stock of the company. By the arbitration provision of the supplemental agreement, the Ridder trustee, if dissatisfied with the conclusions of the other two trus-

tees as to anything connected with the management of the appellee Seattle Times Company, the business being the running, operation and publication of a newspaper, could have such difference or differences settled by the then General Manager of the Associated Press, who, by reason of his position and the experience which makes it possible for him to hold such a position, is peculiarly competent to settle the same. In other words, the supplemental agreement offered the Ridders, upon the death of Mr. Blethen, protection with respect to the investment aforesaid. The establishment of this protection is one of things appellant seeks in this law-suit. As we have said, the protection provided by the supplemental agreement amounts to nothing, if its operative effect is to be postponed for the duration of the probate of the Blethen estate. To be effective, the trust arrangement should be in operation now. So, what is the right which plaintiff, assignee of the Ridders, seeks to protect and enforce in this law-suit? It is the right to be put in position to protect an investment of more than a million and a half dollars. What is the right worth? Defendants will say that it cannot be valued. We say that under the decisions its value can be determined, and that such value is to be measured by the investment in question. The investment sought to be protected gives to this right a value in the amount thereof, namely, approximately $1,500,000.

In support of what we say, see:

Black v. Jackson, 177 U. S. 349, 20 S. Ct. 648, 44 L. Ed. 801;

Arndt v. Bank of America, 48 Fed. Supp. 961;
Peterson v. Sucro, 93 F. (2d) 878, 114 A. L. R. 890, (C.C.A. 4);
Trainor v. Mut. Life Ins. Co., 131 F. (2d) 895, (C.C.A. 7);
Beneficial Industrial Loan Corp. v. Kline, 132 F. (2d) 520 (C.C.A. 8);
Evenson v. Spaulding, 150 Fed. 517, (C.C.A. 9);
American Fisheries Co. v. Lennen, 118 Fed. 869, (C.C.D. Conn.);
Miles Laboratories v. Seignious, 30 F. Supp. 549, (D.C., E.D., So. Car.);
Harrison v. Grandison Co., 34 F. Supp. 356, (D.C., E.D., La., New Orleans D.);

In the Beneficial Industrial Loan Corporation case, Supra, (132 F. (2d) 520), the law as announced is applicable in the situation before us. We quote from the opinion as follows:

> "The matter in controversy here is the trade name in question and the sum in controversy is not alone the damage which is claimed to have been done by the defendants but is the value of the property interest in that trade name. In Indian Territory Oil & Gas Co. v. Indian Territory Illuminating Oil Co., 10 Cir., 95 F. 2d 711, 713, where the defendant was restrained from using the words 'Indian Territory' as part of its name the court said:
>
> > " 'The test in determining the amount in controversy in a case of this kind presenting a continuing wrong to an established business growing out of unfair trade practices, is not the immediate pecuniary damages arising from the wrongful acts. It is the value of the business or the right to be protected; and business reputation or good will is an intangible asset to be taken into consideration in ascertaining the extent and value of the business or right. See Bitterman v. Louisville & Nashville R.R. Co., 207 U. S. 205, 28 S. Ct. 91, 52 L. Ed.

171, 12 Ann. Cas. 693; Standard Oil Co. of New Mexico v. Standard Oil Co. of California, 10 Cir. 56 F. 2d 973.'

"In Harvey v. American Coal Co., 7 Cir., 50 F. 2d 832, 834, a case involving unfair competition in the use of the name 'Pocahontas' by coal dealers, the court said: 'It is the good will —the right to the exclusive use of the name— which is endangered, and the bare statement of the facts conclusively indicates a value many times larger than the jurisdictional amount'."

In the American Fisheries Company case, Supra (118 Fed. 869), there is a statement pertinent here, and we quote the same:

"The fact that an actual injury resulting from the violation of a right is small, and the interest to be effected by an injunction is large, is not to weigh against the interposition of preventive power in equity when it is clear that on one hand a right is violated and on the other a wrong committed. Railroad Co. v. McConnell (C.C.) 82 Fed. 65. The value of the object to be gained by the bill is the criterion in each case. In the present inquiry the object to be gained is to prevent the defendants from continuing their connection, directly or indirectly, with the plant, equipment, and business of the Manhaden Oil & Guano Company. The evidence shows beyond peradventure that their actual cash interest therein, direct and indirect, through themselves and their families, is largely in excess of the jurisdictional amount. The salaries alone which they receive as the managing and controlling spirits are sufficient to furnish jurisdiction. The annual catch of fish, together with the oil and guano and scrap into which the fish are transmuted, are excessively ample. It would be idle and superfluous to state in concrete form that the matter in dispute exceeds, exclusive of interest and costs, the sum of $2,000."

In the Miles Laboratories case, Supra (30 F. Supp. 549), the court said:

> "It is quite true that the plaintiff makes no attempt by pleading or proof to evalue in money the damage to it by the five sales of Alka-Seltzer made by the defendant, each at a few cents under the so-called 'fair trade price.' Nor does the plaintiff contend that these five sales did cause monetary damage to it in excess of three thousand dollars. However, it is a firmly established principle of law that when a litigant seeks an injunction to protect a right, and shows that some invasion of that right has occurred, or been threatened, the test of the jurisdictional amount is the value of the right that is to be protected, and not the extent of the monetary loss or damage that has been suffered or is threatened by the invasion. The reasons for this rule are so obvious, and have been so frequently pointed out in the cases cited, that further discussion of them here can add nothing to what has previously been paid."

As strongly suggestive of the rule applicable in the situation before us, we refer to the cases of *Black v. Jackson,* 177 U. S. 349, 20 S. Ct. 648, 44 L. Ed. 801; and *Arndt v. Bank of America,* 48 F. Supp. 961 (D.C., N.D., Calif., S.D.).

In the Black case, plaintiff brought suit to enjoin interference with his possession of certain land. He had settled on the land under the homestead law, but had not yet received patent from the Government. Legal title to the land was in the Government. Plaintiff simply had possession. The claim was advanced by the defendant that the matter in controversy was the right of possession to the land, and that there was no showing as to the value of

this right; and that, as a consequence, the Federal Court was without jurisdiction. The Supreme Court refused to accept this view and held that the value of the land determined the amount in controversy. The court said:

> "Although the naked legal title remains in the United States in trust for the person who may earn it, we think that in determining the value of the matter in dispute we should look at the value of the land, not simply at the value of the right of present possession. According to the weight of the proof, the value of the land embraced by the homestead entry of Black is more than the sum required for our jurisdiction."

In the Arndt case the action was one to recover $420 interest on a $1,000 note and to cancel the trust deed which had been given to secure the note. The theory was that the transaction was usurious. Claim was made that the controversy involved only a note for $1,000 secured by a deed of trust plus a monetary demand of $420, or a total of less than $3,000; and that, as a consequence, the court was without jurisdiction.

The Court held that the matter in controversy was the value of the land, saying:

> "While not too clearly expressed in the complaint, it is obvious that the objective of plaintiffs is to remove, for the present and the future, what is now an encumbrance and cloud on the title of their farm property."

The following taken from the opinion in this case is very pertinent:

> "The Statute (28 U.S.C.A. § 41) requires the matter in controversy to exceed the sum or

value of $3,000. It has long been unquestioned that a money demand is not the sine qua non. Here the complaint shows the matter in controversy to be the farmer plaintiffs' right of enjoyment of their farm property (alleged to be worth in excess of $3,000) free of the impairment of the demand and claim of lien of defendants. *Frontera Transportation Co. v. Abaunza,* 5 Cir., 271 F. 199, is in point. In that case, cancellation of a mortgage (upon which $600 was alleged to be due) was sought. The mortgaged property was alleged to be worth in excess of $3,000. True, by answer the defendant alleged the amount of the mortgage debt to be in excess of $3,000 and the lower court required a tender of $5,000 by plaintiff as the amount necessary to satisfy the mortgage. The Circuit Court held that the defendants, having so answered, could not insist that the amount in controversy did not exceed $3,000. In principle, however, the value of the property was recognized to be the basis for determination of the jurisdictional amount. The Court said:

> " 'The suit in this case is not a suit to recover $600, but to remove a cloud on the title to a piece of property. * * * Here a decree is sought to prevent the defendant from using his mortgage and these notes for any purpose, and to clear up the title to his entire property, which is alleged to be worth much more than $3,000.' Frontera v. Abaunza, supra, 271 F. at page 201.

"See, also *Greenfield v. United States Mortgage Co.,* C. C., 133 F. 784. *Squire v. Robertson,* C. C., 191 F. 733."

So, in the matter before us, the suit, one with respect to the title, possession and control of certain stock, and one to eliminate defendants from such title, possession and control and to place the same in other parties involves the stock, and the

value thereof and the extent of the investment represented thereby is the thing that determines the amount in controversy.

Plaintiff seeks herein the right to protect its big investment in the manner and as provided by the supplemental contract aforesaid. This right is the right to participate in the voting of the majority of the voting stock, the Class B common stock, of appellee, Seattle Times Company, with the accompanying privilege of submitting any dispute between the designated trustees as to the management of Seattle Times Company to the manager of the Associated Press for final and conclusive decision. Obviously this right with this accompanying privilege is of great value to appellant, and appellant insists that such value is fixed by its investment, namely, $1,541,970.

CONCLUSION

Whether or not the District Court has jurisdiction in this cause depends on the pecuniary result, viewed not alone from the point of view of the plaintiff but also from the point of view of the defendants. The lower court failed to apply this test. As to the first matter in controversy the thing involved is the protection of the investment by plaintiff of approximately $1,500,000, and it is the contention of appellant that in view of this the first matter in controversy involves a sum or value far in excess

of $3,000, exclusive of interest and costs. As to the second matter in controversy, the impression of a trust upon the stock in question in favor of Clarence B. Blethen II along with his three brothers, admittedly a sum far in excess of $3,000 is involved. The lower court conceded this when it found:

> "That the loss or detriment to defendants if plaintiff should prevail on the second matter in controversy, as referred to in paragraph 3 of the prayer of plaintiff's complaint, exceeds in value the sum of $3,000 exclusive of interest and costs."

Success with respect to this second matter in controversy would mean in substance the taking of stock of the value of many thousands of dollars from the three brothers and transferring it to Clarence B. Blethen II. The lower court fell into error, in holding that it did not have jurisdiction of the cause because of lack of the jurisdictional amount, because of a refusal to apply to the matters in controversy, having particular reference to the second matter in controversy, the rule and test that it is the pecuniary result to either party to the litigation which determines whether or not the jurisdictional amount is involved.

As we have stated, if the requisite amount is involved in either matter in controversy, the lower court has jurisdiction for the purpose of disposing of the whole controversy.

We respectfully submit that the District Court

had jurisdiction and that it erred in entering the order dismissing the action; that the judgment appealed from, dismissing the action, should be reversed and the cause remanded with instructions to accept jurisdiction of both matters in controversy.

Respectfully submitted.

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